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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

SAUNDERS v. TERRY.

June 11, 1914.

[82 S. E. 68.]

1. Executors and Administrators (§ 383*)—Sales under Order of Court—Collateral Attack—Presumptions as to Validity.—Where the original papers, in a creditors' suit to subject decedent's land to the payment of her debts, had been lost, but copies were found in the office of the clerk of an order appointing a commissioner to make a report of the property left by her liable to the payment of her debts and of a decree for the sale of the land, it would be presumed, as against a collateral attack on the sale, that there was no personal estate out of which the debts could have been paid, as the strongest presumptions are indulged in favor of the correctness of the judgments and decrees of a court of record.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. § 1554; Dec. Dig. § 383.* 5 Va.-W. Va. Enc. Dig. 567, 569.]

2. Executors and Administrators (§ 383*)—Sales under Order of Court—Collateral Attack—Defect of Parties.—Where a decedent left no personal property for the payment of debts, a decree for the sale of her real estate for the payment thereof, in a suit by a creditor against the sole heir and distributee, could not be collaterally attacked because no personal representative of the decedent was a party.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. § 1554; Dec. Dig. § 383.* 5 Va.-W. Va. Enc. Dig. 564.]

3. Executors and Administrators (§ 346*)—Sales under Order of Court—Validity—Defects in Decree.—Where a copy of a lost decree for the sale of a decedent's land for the payment of her debts, when read as a whole, contained authority to sell the land, and the sale was made, reported, and confirmed by a later decree, the sale was not invalid because of the omission of the word "sell" from the decree authorizing the sale.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 1444, 1447; Dec. Dig. § 346.* 5 Va.-W. Va. Enc. Dig. 564.]

4. Executors and Administrators (§ 397*)—Sales under Order of Court—Deeds—Sufficiency to Convey Title.—A deed to a decedent's land sold in a creditor's suit for the payment of her debts was valid,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

though it described the land only by reference to the bill which had been lost, where it contained all the essential recitals to bring it directly within Code 1904, § 3333a, providing that when the title to any property claimed under a conveyance or deed purporting to be in execution of a sale under any judicial proceeding, according to the terms of such judicial proceeding, is attacked, if it shall appear from the face thereof that the sale was regularly made in accordance with the terms of the judicial proceeding, it shall be prima facie evidence that the sale was regularly made, and that the recitals in the deed or conveyance are true.

[Ed. Note.—For other cases, see *Executors and Administrators*, Cent. Dig. §§ 1598-1604; Dec. Dig. § 397.* 5 Va.-W. Va. Enc. Dig. 571.]

5. Tenancy in Common (§ 15*)—Adverse Possession—Necessity of Ouster or Notice of Adverse Claim.—Under Code 1904, § 2736, providing that, in ejectment by one or more tenants in common, plaintiff must prove an actual ouster or some act amounting to a total denial of plaintiff's right as a cotenant, the possession of a tenant in common was not adverse to the purchaser of the other tenant's interest at a judicial sale, where there was no notice to him of such hostile acts on the part of the tenant in possession as would amount to an ouster, or notice of such intention or of acts implying notice.

[Ed. Note.—For other cases, see *Tenancy in Common*, Cent. Dig. §§ 42-52; Dec. Dig. § 15.* 5 Va.-W. Va. Enc. Dig. 127.]

6. Tenancy in Common (§ 15*)—Adverse Possession—Rights of Purchaser.—Where the daughter of a decedent, whose undivided interest in land was sold for the payment of her debts, never claimed an interest in the land, left it when very small, and lived with different persons, and later with her aunt, the owner of the other undivided interest on the land in question, from which place she went to the almshouse, some years before the institution of a suit by the purchaser for partition, and had not been on the land since, except for a visit to her aunt of a week or two, she had no rights by adverse possession as against the purchaser.

[Ed. Note.—For other cases, see *Tenancy in Common*, Cent. Dig. §§ 42-52; Dec. Dig. § 15.* 5 Va.-W. Va. Enc. Dig. 127.]

Appeal from Corporation Court of Lynchburg.

Suit for partition by Martha A. Terry against W. R. Saunders. Decree in favor of plaintiff, and defendant appeals. Affirmed.

Guthrie & De Jarnette, of Houston, for appellant.

Booker & McKinney and *James S. Easley*, all of Houston, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.